IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3468 of 2004

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLESHBHAI B SHAH

Versus

BOTAD MERCANTILE CO.OP.BANK LTD.

Appearance:

MR BAIJU JOSHI for Petitioner No. 1

MR DP KINARIWALA for Respondent No. 1

RULE SERVED BY DS for Respondent No. 1,2-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 20/12/2004

ORAL JUDGEMENT

1. The petitioner herein has challenged the order passed by the Tribunal at annexure-E dated nil/12/2004 whereby, the Tribunal has dismissed the application for condonation of delay.

2. Mr. Kinariwala learned advocate for the respondents has submitted that the order passed by the Tribunal is just and proper and no interference is called for by this Court.

3. Heard the learned advocate for the respective parties, From the record it appears that though the petitioner was having the knowledge about the decree passed by the Board of Nominees Court, he was not able to prefer an appeal within reasonable time. According to the petitioner, because of the illness of the brother-in-law of the petitioner he could not file the proceedings in time. He has produced a certificate issued by the competent authority in these proceedings.

4. Mr. Kinariwala learned advocate for the respondents has submitted that the order passed by the Tribunal is just and proper and no interference is called for by this Court.

5. As a result of the hearing I am of the opinion that the reasoning given by the Tribunal for not producing the documents with regard to illness of the relatives is not justifiable. The Tribunal ought have called upon the petitioner to produce evidence, if any, in this respect. I am further of the opinion that looking to the triable issues involved in the appeal, the Tribunal should have given an opportunity to the petitioner, especially in view of the decision of the Apex Court in the case of Collector Land Acquisition, Anantnag v. Mst. Katiji reported in A.I.R. 1987 S.C. p.1353, whereby it is held that for condonation of delay, Courts should adopt liberal approach.

6. In the premises aforesaid, the impugned order at Annexure-E is quashed and set aside. The application for condonation of delay is granted. The Tribunal shall hear the Appeal and the application for stay on merits in accordance with law, within three months from the date of the receipt of the order of this Court. However, it is made clear that this Court has not entered into the merits of the case and has considered the matter only on the point of condonation of delay. Further the amount of Rs.15,000=00 [Rs. Fifteen Thousand Only] deposited by the petitioner by way of costs as per the direction of the Court, shall be adjusted amongst the original debtor and borrower. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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